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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/443,986 | 11/19/1999 | DANIEL JOSEPH OMAHONY | 99.1064.US | 8043 |

7590

09/04/2003

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EXAMINER

ROBINSON, HOPE A

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 09/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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| EXAMINER |
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DATE MAILED:

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Commissioner for Patents

1. The amendments mailed July 8, 2002, September 24, 2002, January 29, 2003 and June 24, 2003 have been received and entered. However, the amendment mailed July 8, 2002 in response to the Office mailed January 2, 2002 is non-responsive.
2. Claims 1-17, 27, 30-34 and 40-43 have been canceled. Claims 44-88 have been added.
3. The amendment filed on July 8, 2002 canceled the elected claims (1-17, 27, 30-34 and 40-43) which were examined in Paper No. 14 directed to a retro-inverted peptide (SEQ ID NOS: 1-3 corresponding to ZELan 144, ZELan 145 and ZELan 146) and submitted new claims (44-88) directed to a synthetic peptide comprising a retroinverted peptide consisting of SEQ ID NO: 16-83 (incorporated by reference), which is non-responsive (MPEP § 821.03). The newly submitted claims are now directed to a "synthetic peptide comprising a retroinverted peptide" which differs from the original claim of "a retro-inverted peptide". In addition, the newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed with regard to SEQ ID NOS: 16-83 and the synthetic peptide for the reasons discussed above, and since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. The newly submitted claims would have been subjected to a Restriction Requirement had they been presented at the time of filing. Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.
4. It is noted that applicant filed a Declaration under MPEP 608.01(p)(I)(A)(2)(6.19) regarding incorporation of material into the specification by reference to a foreign application in Paper No. 24, indicating that the amendatory material submitted on July 1, 2002 consists of the same material incorporated by reference from WO 09/51325, however, page 23 of the response provides a list of 5 changes made to material incorporated by reference. The statement made on page 23 of the response "Applicants have made the following changes" is not equivalent to the statement made in the declaration "the amendatory material submitted on July 1, 2002 consists of the same material incorporated by reference from WO 09/51325". Additionally, page 24 of the response addresses newly added sequences and where support can be found, which is confusing. It is stated that "the use of the Caco-2 assay to obtain data is described at pages 19-21". Of what? The instant application or the WO 09/51325. Note also that page 25 of the response indicates that support for materials incorporated in the specification can be found in the PCT application, and it is unclear what document is being referred to. Applicant is reminded that no new matter should be entered with amendments filed. Correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope Robinson whose telephone number is (703) 308-6231. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:30 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S.F. Low, can be reached at (703) 308-2923.

Any inquiries of a general nature relating to this application should be directed to the Group Receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted by facsimile transmission. The official fax phone number for Technology Center 1600 is (703) 308-4242. Please affix the examiner's name on a cover sheet attached to your communication should you choose to fax your response. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

Hope Robinson, MS *HR*
Patent Examiner

Christopher S. F. Low
CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600